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U.S. DISTRICT COURT E.D.N.Y.

★ MAY 25 2006

MANDATE

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3
4 SUMMARY ORDER

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6 LONG ISLAND OFFICE
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THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO
THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION
OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS
CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF
COLLATERAL ESTOPPEL OR RES JUDICATA.

13 At a stated term of the United States Court of Appeals
14 for the Second Circuit, held at the Thurgood Marshall United
15 States Courthouse, at Foley Square, in the City of New York,
16 on the 29th day of March, two thousand and six.

17
18
19 PRESENT: HON. DENNIS JACOBS,
20 HON. PIERRE N. LEVAL,
21 Circuit Judges.
22 HON. JED S. RAKOFF,¹
23 District Judge.

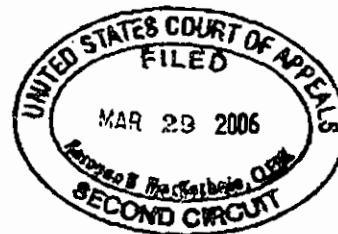
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25 -----X
26 METRON TECHNOLOGY DISTRIBUTION
27 CORPORATION,

28
29 Movant.

30
31 TOKYO ELECTRON ARIZONA, LLC,

32
33 Plaintiff-Counterclaim-
34 Defendant-Appellee.

35
36 -v.-



37
38
39 05-2522-CV

DISCREET INDUSTRIES CORPORATION and
OVADIA MERON,

1 The Honorable Jed S. Rakoff, United States District
Judge for the Southern District of New York, sitting by
designation.

Issued as Mandate:

4/19/06

1
2 Defendants-Counterclaimants-
3 Appellants.
4

5 HUMMEL MACHINE AND TOOL COMPANY,
6 EDWARD EVANS, EASTERN MANUFACTURING
7 SERVICES, INC., NEW HORIZON MACHINE
8 COMPANY, doing business as Tirrena
9 Tech or ASI, GILBERT PRECISION MACHINE
10 and JOHN AND JANE DOE 1-30,

11
12 Defendants.
13
14 - - - - - X
15

16 APPEARING FOR APPELLANTS: OLEG RIVKIN, Fox Horan &
17 Camerini LLP, New York New York,
18 for Discreet Industries
19 Corporation and Ovadia Meron.
20

21 APPEARING FOR APPELLEE: EDGAR H. HAUG, Frommer Lawrence
22 & Haug LLP (Kevin Murphy and
23 David A. Zwally, of counsel),
24 New York, New York, for Tokyo
25 Electron Arizona, LLC.
26

27
28 Appeal from the United States District Court for the
29 Eastern District of New York (Hurley, J.).
30

31 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED
32 AND DECREED that the judgment of the district court be
33 AFFIRMED.
34

35
36 Tokyo Electron Arizona, LLC and Ovadia Meron
37 ("defendants") appeal from a judgment, entered in the United
38 States District Court for the Eastern District of New York
39 (Hurley, J.), following a jury verdict--and numerous post-
40 trial motions to set aside the verdict--in favor of
41 plaintiff Tokyo Electron Arizona ("TAZ") on its claims of
42 misappropriation, conversion, tortious interference with
43 contract, and unfair competition under both the Lanham Act

1 and New York State law. (TAZ lost on its RICO claim and
2 withdrew its unjust enrichment claim from the jury's
3 consideration.) The jury verdict sheet adds up to \$6.3
4 million in compensatory damages, \$3.6 million in punitive
5 damages, and \$1.5 million in attorneys' fees. At base, this
6 case concerns defendants' theft and use of TAZ's trade
7 secrets for the production of replacement parts for the
8 "Eclipse" machine, which is used to manufacture
9 semiconductors.

10
11 (1) As to whether the jury awarded duplicative damages,
12 defendants have waived any argument regarding the jury
13 instruction or verdict sheet given their failure to raise
14 this issue in their requests to charge or at the charging
15 conference, or to lodge a timely objection, or to request
16 that the court poll the jury. See Rule 51, Fed. R. Civ. P.;
17 Lavoie v. Pacific Press & Shear Co., 975 F.2d 48, 54-55 (2d
18 Cir. 1992).

19
20 (2) The court did not abuse its discretion in issuing a
21 permanent injunction as to all 266 parts of the Eclipse
22 machine to prevent any future misappropriation of TAZ's
23 trade secrets by defendants. Rondeau v. Mosinee Paper
24 Corp., 422 U.S. 49, 62 (1975); Knox v. Salinas, 193 F.3d
25 123, 128-29 (2d Cir. 1999) (per curiam).

26
27 (3) The court correctly denied defendants' post-verdict
28 motion for judgment as a matter of law on TAZ's unfair
29 competition claims: TAZ presented evidence of actual
30 customer confusion. See Resource Developers, Inc. v. Statue
31 of Liberty--Ellis Island Found., Inc., 926 F.2d 134, 139 (2d
32 Cir. 1991) (Lanham Act); WWW Pharm. Co., Inc. v. Gillette
33 Co., 984 F.2d 567, 576 (2d Cir. 1993) (New York law).

34
35 (4) The court correctly denied defendants' post-verdict
36 motion for judgment as a matter of law on TAZ's claim based
37 on tortious interference with contractual relations: TAZ
38 presented evidence sufficient to support the judgment,
39 including defendants' knowledge of the existence of a non-
40 disclosure agreement between TAZ and one of its suppliers.
41 See Albert v. Loksen, 239 F.3d 256, 274 (2d Cir. 2001).

1 (5) TAZ was entitled to lost profit damages sustained
2 after September 18, 2003 because § 12.1 of the asset
3 purchase agreement among TAZ, Tokyo Electron Limited (TAZ's
4 parent company), and Metron reserved TAZ the right to such
5 damages.

6 (6) As the "prevailing party" in this suit, TAZ was
7 entitled to attorneys' fees under the Lanham Act. 15 U.S.C.
8 § 1117(a).

9 (7) The court correctly upheld the jury's punitive
10 damage award because defendants adduced no evidence or
11 argument demonstrating that that award was excessive or
12 beyond the defendants' ability to pay. See Smith v.
13 Lightning Bolt Prods., Inc., 861 F.2d 363, 373 (2d Cir.
14 1988); see also BMW of N. Am. v. Gore, 517 U.S. 559, 574-75
15 (1996).

16 We have reviewed defendants' remaining arguments and
17 find them all to be without merit. For the foregoing
18 reasons, the judgment of the district court is hereby
19 **AFFIRMED.**

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25 FOR THE COURT:
26 ROSEANN B. MACKENZIE, CLERK
27 By:
28

29 
30 Lucille Carr, Deputy Clerk

31 A TRUE COPY
32 Roseann B. Mackenzie, CLERK
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34 
35 Jennifer Martini
36 DEPUTY CLERK
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